

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service		

REPLY COMMENTS OF GVNW CONSULTING, INC.

GVNW Consulting, Inc.
Jeffrey H. Smith
Chairman of the Board
Vice-President, Western Region Division Manager
P.O. Box 2330
Tualatin, OR 97062
Phone: 503.612.4409
email: jsmith@gvnw.com

TABLE OF CONTENTS

Summary of Comments	3
Introduction and Background	4
SCOPE OF SUPPORT ISSUES	5
A primary line restriction is antithetical to network development	5
A primary line restriction is not administratively workable	6
SEVERAL COMMENTS LACK A SOLID PUBLIC POLICY FOUNDATION OR ANY APPARENT RATIONALE	7
The PUC of Oregon approach fails at least three key criteria	7
Cell site funding proposal lacks substantiation	8
The Verizon freeze proposal is disingenuous at best	8
Reasons for growth in the Fund are incorrect	8
THE PRIMARY LINE CONCEPT RUNS COUNTER TO OTHER COMMISSION GOALS	9
PROCESS FOR DESIGNATING ETCs	9
There should be six universal standards met to be eligible for universal service funds	10

Summary of Comments

The guiding principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a FULL recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is a cost recovery mechanism for rural carriers.

Telecommunications service providers build networks that are engineered to serve an entire area and the disconnection of a line by a customer does not translate into a corresponding reduction in cost or the obligation to serve remaining customers.

The Commission should adopt six mandatory standards that require a review that meets the test of being a rigorous, fact-intensive, cost-based analysis. It should be clearly stated that the benefits must outweigh the costs in order to consider granting of CETC status. The Commission should consider providing guidance on quality of service standards applicable to competitive eligible telecommunications carriers. Another important aspect of any public interest test is that the Commission should adopt the creamskimming standards set forth in the Highland Cellular Order as the national benchmark. In Highland Cellular, the public interest test set forth was that the smallest geographic area of service that is appropriate for a competitor to a rural telephone company is the wire center.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. The purpose of these reply comments is to respond to the Commission's Notice of Proposed Rulemaking that was issued as FCC 04-127. In this proceeding, the Commission has requested comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).¹ In particular, the Commission asked for comments reviewing the support (or lack thereof) for second lines.² The Commission also asked for comments on the Joint Board recommendations to examine the process for designating ETCs.³

The guiding principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a **FULL** recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is an interstate **cost** recovery approach for rural carriers⁴.

¹ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, released February 28, 2004.

² *Id.*

³ *Id.*

⁴ See, for example, OPASTCO's Universal Service in Rural America: A Congressional Mandate at Risk, January 2003, page viii: "High-cost universal service support is not a subsidy program for end-user customers. It is a cost recovery program designed to promote infrastructure investment in areas where it would not otherwise be feasible for carriers to provide quality services at rates that are affordable and reasonably comparable to urban areas".

SCOPE OF SUPPORT ISSUES

The majority of commenters do not support the proposal to limit universal support to primary lines. In fact, the position of opposing the proposal to limit support to primary lines created a rare state of agreement between wireline carriers and wireless providers⁵. Perhaps more significant than this temporary alliance are the reasons stated by each segment of the industry for their opposition to the primary line restriction proposal.

A primary line restriction is antithetical to network development

Both industry segments offer arguments supporting the need for network development. In its comments at page iv, the National Telecommunications Cooperative Association (NTCA) states in part: “Telecommunications service providers build networks that are engineered to serve an entire area and the disconnection of a line by a customer does not translate into a corresponding reduction in cost or the obligation to serve remaining customers.”

Notwithstanding our objections to their comments filed in certain state proceedings⁶, we note with interest the comments of United States Cellular Corporation beginning at page 43 that both wireline and wireless carriers receive support for building networks, not individual connections. In a related vein, AT&T Wireless at 3-4 offers that

⁵ Wireless opposition to the primary line restriction is illustrated in the filings of CTIA beginning at 14, RCA et al at 23, AT&T Wireless at 1-4, and US Cellular beginning at 43.

⁶ US Cellular Docket UM 1084 in the state of Oregon, with the June 24, 2004 Order currently under a request for reconsideration. CETCs may receive the same USF support, but are not held up to the same requirements or service standards as the incumbent carriers, which also serve as the Carrier of Last Resort (COLR) in rural areas. For example, wireless carriers are not required to support E911 services, provide access to a variety of long distance carriers, or publish directories.

it “makes no sense” to promote spectrum-based rural service while eliminating the incentive of universal service support for the wireless provider.

A primary line restriction is not administratively workable

A large number of commenters cite administrative problems with the primary line restriction, including our GVNW comments at 9-11. We strongly disagree with the National Association of State Utility Consumer Advocates (NASUCA) comments at page 26 where they assert that a primary line concept would be easy to administer. We believe just the opposite to be the case. The most problematic concerns were placed in the public record by the Universal Service Administrative Company (USAC). In its comments, USAC notes a large increase in its data collection efforts if the Commission were to adopt a primary line restriction. Noting the need to protect against waste, fraud, and abuse, USAC submits that “it would have to collect substantially more data than it collects today.” USAC offers as an example that it “may have to collect customer-specific information for every primary line served by ILECs and CETCs. This information could include customer name, address, and perhaps even a unique identifier. . . . If the Commission adopts a primary line approach, it is quite possible that USAC would have to establish direct relationships with end-user consumers for the collection and validation of primary line elections.”

Previously, the Commission rejected a Joint Board recommendation to limit support to primary lines. This was the right public policy decision then, and remains so today. One of the major concerns raised by the Commission at that time was the

administration issue related to such a policy change. The same concerns remain, and have actually become more problematic in the current environment.

SEVERAL COMMENTS LACK A SOLID PUBLIC POLICY FOUNDATION OR ANY APPARENT RATIONALE

There were many well-reasoned, rational arguments placed into the record by parties on both sides of several of the issues. However, there were several comments that lacked logic or substantiation. We encourage the Commission to reject these specific items noted as follows:

The PUC of Oregon approach fails at least three key criteria

In its comments (8-10), the Public Utility Commission of Oregon proposes, in simplest terms, to develop a ratio of each respective state's support based on an economic cost model as a percentage of total support generated, and instead of the funds going to carriers directly, to instead install each state as an intermediate clearinghouse for the funds. The states would then have the flexibility to award these funds to either non-rural or rural carriers. This is consistent with their ill-conceived approach in two recent decisions that permitted a CETC applicant for rural area certification to "demonstrate" intent to serve throughout the rural area by promising to add cell sites in ostensibly non-rural service areas. Not surprisingly, this action is the subject of the reconsideration referenced in footnote 6 above. The Commission should reject the OPUC proposal as it fails to meet criteria of predictability, sustainability, and sufficiency.

Cell site funding proposal lacks substantiation

In yet another twist by wireless commenters, the comments of Commnet Wireless, LCC recommended a supplementary funding approach for cell sites at an unsupported and unsubstantiated level of \$3,000 per cell site per month. While we commend the novelty of the idea, and believe that more discussion is merited on wireless providers that do not provide the same services as wireline carriers receiving support on a different cost basis, there is not sufficient data offered to consider such an approach at this time.

The Verizon freeze proposal is disingenuous at best

Somewhat surprisingly, Verizon (at 18-19) proposes a variant of the concept of what's mine is mine, and what's yours is mine. While on the one hand arguing that its IAS support levels should not be frozen, it then blithely suggests that a method to maintain the viability and sustainability of universal service funding mechanisms is to freeze high cost fund levels. This self-serving proposal should be rejected.

Reasons for growth in the Fund

Several commenters incorrectly asserted that rural ILECs are the driver to the growth rates in the universal service funding (e.g., Sprint at 4, CTIA at 6, US Cellular at 29). This assertion is contrary to the facts, and is at odds with the Joint Board's own recognition of the rapid growth in competitive eligible telecommunications carrier support levels.

A cursory review of USAC data for the first half of 2004 indicates what is actually happening in the area of fund growth. While ILEC support is forecasted to decrease in the range of \$6,000,000 over prior year levels, wireless CETC amounts will go up by over \$100,000,000. The spurious allegations on the part of Sprint, US Cellular, and CTIA should be rejected out of hand.

THE PRIMARY LINE CONCEPT RUNS COUNTER TO OTHER COMMISSION GOALS

The Commission has devoted extensive resources over the last several years to fighting the issue of customers being “slammed” by carriers, and we note that due to the Commission’s diligence that progress has been made in this regard. We respectfully submit that one perhaps unintended consequence of adopting a primary line concept could be to create new incentives for slamming of customers. In its comments at page 19, CenturyTel, Inc. offered the following observation: “. . . the scheme is ripe for gaming by carriers to ‘win’ universal service support through fraudulent practices such as ‘slamming’. Due to the high stakes involved in federal funding of universal service, the slamming problems associated with long-distance service competition would pale in comparison.”

PROCESS FOR DESIGNATING ETCs

To date, states have been quite anxious to approve virtually any CETC application for eligibility. It would appear that in some cases states have confused the “**shall**”

applicable to non-rural areas with the “**may**” designation that is intended to be applied to an analysis of a request for multiple ETCs in a rural study area.

There should be six universal standards met to be eligible for universal service funds

We recommend that the Commission promulgate six basic universal requirements that must be met by any carrier seeking ETC designation, thus comporting with a proper interpretation of congressional intent for universal service.

The Commission should adopt six mandatory standards as follows:

- 1 – The application will be reviewed in a manner that meets the test of being a rigorous, fact-intensive, cost-based analysis. It should be clearly stated that the benefits must outweigh the costs in order to consider granting of CETC status.
- 2 - The Commission should provide guidance on quality of service standards applicable to competitive eligible telecommunications carriers.
- 3 – The smallest geographic area of service for designation as an ETC in a rural service area is the wire center.
- 4 - The Commission should adopt standards that require each applicant clearly demonstrate a commitment to serve each specific rural area with detailed build-out proposals.
- 5 - The Commission should require that any ETC designation review include consideration of the financial capabilities of the applicant.
- 6 – The Commission should require that any application demonstrate its ability to respond appropriately in the case of an emergency.

GVNW Consulting, Inc.
Reply Comments in CC Docket No. 96-45
September 21, 2004

Respectfully submitted,

electronically submitted through ECFS

GVNW Consulting, Inc.
Jeffrey H. Smith
Chairman of the Board
Vice-President, Western Region Division Manager
PO Box 2330
Tualatin, OR 97062
Phone: 503.612.4409
email: jsmith@gvnw.com